

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**PRIORITY ACCESS SOLUTIONS
CORPORATION,**

Plaintiff,

V.

**IBM a/k/a INTERNATIONAL
BUSINESS MACHINES
CORPORATION,**

Defendant.

CIVIL ACTION NO. 5:07cv142-DF

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Priority Access Solutions Corporation (“Plaintiff”) files this Original Complaint against International Business Machines Corporation (“Defendant”) for infringement of United States Patent No. 5,717,604 (hereinafter, “604 Patent”).

JURISDICTION

1. This is an action for patent infringement under title 35 of the United States code. Plaintiff is seeking injunctive relief as well as damages.
2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.
3. Plaintiff Priority Access Solutions Corporation is a Delaware corporation and is located in Newport Beach, California.
4. Defendant IBM is a New York corporation with a principal place of business at 1 New Orchard Road, Armonk, New York 10504 and that does business

throughout the United States. IBM's agent for service of process is: CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

5. On information and belief, Defendant's products that are alleged herein to infringe are made, used, imported offered for sale and/or sold in the Eastern District of Texas.

6. This Court has personal jurisdiction over Defendant because Defendant has committed acts of infringement in this district; does business in this district; and / or has systematic and continuous contacts in this district.

VENUE

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 (c) and 1400(b), because Defendant is deemed to reside in this district.

INFRINGEMENT OF U.S. PATENT 5,717,604

8. Plaintiff incorporates paragraphs number 1 through 7 herein by reference.

9. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ *et seq.*

10. Plaintiff is the exclusive licensee of United States Patent No. 5,717,604 with rights to enforce the Patent and sue infringers.

11. A copy of United States Patent No. 5,717,604, titled Network Monitoring System for Tracking, Billing, and Recovering Licenses is attached hereto.

12. The '604 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

13. On information and belief, Defendant IBM has infringed and continues to infringe on the '604 Patent by making, using, importing offering for sale and/or selling

products covered by one or more claims of the '604 Patent, including but not limited to IBM Rational Clearcase products.

14. On information and belief, Defendant contributorily infringed one or more claims of the '604 Patent and continues to contributorily infringe one or more claims of the '604 Patent, pursuant to 35 U.S.C. § 271 in the United States, including in this judicial district.

15. On information and belief, Defendant has induced others to infringe one or more claims of the '604 Patent, pursuant to 35 U.S.C. § 271 in the United States, including in this judicial district.

16. Defendant's actions complained of herein will continue unless Defendant is enjoined by this Court.

17. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

18. Plaintiff has complied with 35 U.S.C. § 287.

19. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

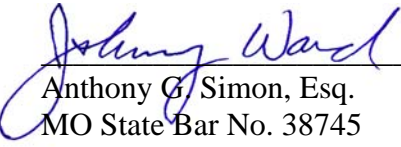
PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

- A. Enter judgment for Plaintiff on this complaint;
- B. Enjoin Defendant, their agents, officers servants, employees, attorneys and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 5,717,604;

- C. Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;
- D. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
- E. Find the case to be exceptional under the provisions of 35. U.S.C. § 285;
- F. Award Plaintiff reasonable attorney fees under 35 U.S.C. § 285;
- G. Order the impounding and destruction of all Defendant's products that infringe the '604 Patent;
- H. Award Plaintiff interest and costs; and
- I. Award Plaintiff such further relief to which the Courts finds Plaintiff entitled under law or equity.

Respectfully Submitted,



Anthony G. Simon, Esq.
MO State Bar No. 38745
SIMON PASSANANTE PC
701 Market Street, Suite 1450
St. Louis, Missouri 63101
Telephone: (314) 241-2929
Facsimile: (314) 241-2029
asimon@simonpassanante.com

Thomas John Ward, Jr.
Texas Bar No. 00794818
WARD & SMITH LAW FIRM
PO Box 1231
Longview, TX 75606-1231
Telephone: (903) 757-6400
Facsimile: (903) 757-2323
jw@jwfirm.com

ATTORNEYS FOR PLAINTIFF